

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4378 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SONUBHAI NAVSUBHAI GAVIT

Versus

DEPUTY CONSERVATOR OF FORESTS

Appearance:

MR JAYANT PATEL for Petitioners
MR HM BHAGAT for Respondents.

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 25/01/99

ORAL JUDGEMENT

In this petition under article 226 of the Constitution, the petitioners have prayed for a writ of mandamus to direct the respondents i.e. Deputy Conservator of Forests, South Dangs Division at Ahwa, Dangs, Range Forest Officer at Chikli and the District Collector of Dangs to regularise the petitioners' possession of the land bearing Survey No. 103, admeasuring 13 hectares situated at Village Bhadmar of taluka Ahwa of District Dangs.

2. Earlier this petitioner had filed SCA No. 6302 of 1996 for the same relief. By order dated 25.11.96 this Court permitted the petitioners to make an application to the Collector of Dangs and to claim benefits of Government resolution dated 6.10.1992 which provided that the tribals who were in occupation of the forest lands prior to 25.10.80 shall be granted the benefit of regularisation of their occupation of the land. Pursuant to the said order the petitioners applied to the Collector of Dangs for regularisation of their possession. By his order dated 8.5.97, the Dy. Conservator of Forest, South Dangs Division at Ahwa communicated the decision of the Committee headed by the Collector of Dangs to the effect that looking to the material on record it was not possible to accept the petitioners claim that the petitioners had started cultivation of the land in question prior to 25.10.80. The petitioners thereafter made a representation to the authorities to reconsider the decision which representation was not accepted. The present petition is, therefore, filed for the aforesaid reliefs.

3. In response to the notice issued by this Court, affidavit in reply was filed by Mr.A.C.Patel, Assistant Conservator of Forests denying the allegations about the petitioners having cultivating the land in question since last many decades. It is pointed out that the first 3 petitioners are small farmers possessing 3.30 acres of land but what they are now demanding are forest land from out of the reserved forest and the same cannot be granted or reserved for cultivation purpose. It is further averred in Para 8 to 10 of the reply affidavit as under:-

"8. Lastly, the Govt. of Gujarat vide their Resolution No. FLD/1092/CM/13/V-3 dtd. 6.10.1992 have decided to prepare a proposal for allotment of forest land which is under cultivation unauthorisedly prior to 1980 (25.10.1980). The person who has cultivated forest land unauthorisedly atleast one time and forest offence was booked in his name should be considered for entitlement of 8 acres (maximum land). A list from offence register was prepared and published in Village Chora (Notice Board) giving sufficient time limit to send their application. The persons who might have cultivated forest land unauthorisedly but their names are not there in the list, such persons were also requested to send their application with proof with cultivation.

"9. I say that total 396 application covering 404 persons demanding 599.70 Hectors were received by the Committee and after careful consideration, the Committee has recommended for regularisation of the forest land for 43 persons covering 21.96 hector land.

"10. However, till 25.11.1996, none of the petitioners have applied for allotment of forest land to the Dist. Committee appointed for the purpose."

It was further averred in the reply affidavit that the petitioners were required to produce the proof about their claim and although sufficient time was given to them to produce evidence none of the petitioners produced any proof to show that they were cultivating the land prior to 25.10.80. Hence the Committee had no other alternative but to reject their claim. The receipt of penalty which the petitioners had produced was dated 24.7.1989 i.e. long time after 25.10.80 and, therefore, the Committee was not in a position to accept the petitioners' claim.

4. After hearing the learned counsel for the parties on 31.7.1998 this Court passed the following order:-

"In view of the serious controversy between the parties whether the petitioners are actually carrying on agricultural operations on land admeasuring 15 hectares in survey no.103 of Village Bhadmar, Taluka Ahwa, Dist. Dangs, it is directed that the Project Officer, Tribal Area Sub Plan at Vansada Dist. Dangs shall visit the aforesaid site in the presence of the Range Forest Officer, Chikli, Tal. Ahwa (Respondent NO.2) and Asst. Conservator Forests, Wood Workshop, Waghai giving notice to the petitioners within ten days from today and submit their report to this Court on or before 13.8.1998. S.O. to 13.8.1998. Adinterim relief granted earlier to continue till then."

5. Pursuant to the aforesaid direction the Committee headed by Mr.B.L.Choudhury, Project Admiistrator, Vastda, A.C.Patel Assistant Conservator Waghai and M.C.Parmar, Range Forest Officer, Chikli visited the site and submitted detailed report dated 6.8.1998. On perusal of the said report it is not possible to accept the petitioners contention that the petitioners have been

cultivating the land in question since last more than 18 years. Many of the forest trees like Sag, Teak and other trees mentioned in the report seem to have been recently cut. The Committee also found that during monsoon there was lot of erosion of soil.

6. Mr. Jayant Patel, Learned Counsel for the petitioners has vehemently urged at the hearing of this petition that previously the petitioners application was rejected because the petitioners could not produce any evidence regarding penalty levied upon the petitioner prior to 25.10.80 but such evidence cannot be made the sole basis for deciding the question whether the petitioners were cultivating the land prior to 25.10.80. He submitted that the petitioners were prepared to file the affidavits of the neighbours i.e. persons who are cultivating in the adjoining lands and that therefore the Collector should be directed to consider the entire matter afresh after permitting the petitioners to produce other evidence like affidavits of neighbours and certificates of the Panchayat etc.

7. It appears that the District Committee considered the orders of penalty in the past as the best possible evidence to show whether the lands were being cultivated by the concerned tribals prior to 25.10.80 or not. Even if the petitioners' contention that other evidence ought to be permissible were to be accepted, a perusal of the report prepared by the Committee headed by the Project Administrator, Vastha and the Rojkam dated 6.8.1998 do not indicate that the petitioners' occupation of the land could be attributed to period prior to 25.10.1980. The averments made in the affidavit that the petitioners had not lodged any claim for regularisation till 25.11.96 and that some of the trees planted on the forest land seem to be only 3 to 4 years old support the respondents case rather than the case of the petitioners. This Court is not to sit in appeal over the decision of the Committee. Ordinarily the petition would have been liable to be dismissed straightaway but in view of the grievances made by the petitioners who are tribals the Court thought it fit to entrust the work of verification of the site to a Committee headed by the Project Officer for Tribal sub-development plan who is supposed to look after the welfare of the tribals in the adjoining area. The report of the said Committee and the Rojkam prepared by the said Committee also do not support the petitioners' case.

8. In view of the above discussion, there is no merit in this petition and the same deserves to be summarily dismissed. The petition is dismissed. Notice

is discharged. Ad-interim relief stands vacated.

9. At this stage the learned Counsel for the petitioners prays that the adinterim relief granted earlier may be continued in order to enable the petitioners to have further recourse in accordance with law. In the facts and circumstances of the case, adinterim relief granted earlier shall continue till 26.2.1999.

jitu